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8
9 **UNITED STATES DISTRICT COURT**
10 **DISTRICT OF NEVADA**

11 EDDIE DUTCHOVER, an Individual,

12 Plaintiff,

13 vs.

14 MOAPA BAND OF PAIUTE INDIANS,
15 MOAPA TRIBAL COUNCIL, AND
16 MOAPA TRIBAL ENTERPRISES,
collectively, "Moapa defendants", VICKIE
17 SIMMONS, TYLER SAMSON,
GREGORY ANDERSON, URAL BEGAY,
18 LESLIE BRADLEY, DARREN DEBODA,
DELAINE BOW, SAMANTHA LEE, a
19 Corporation, DOES 1-50, inclusive and
20 ROE CORPORATIONS 1-50, inclusive,

21 Defendants.

CASE NO.: 2:19-CV-01905-KLD-BNW

**PLAINTIFF'S MOTION FOR
EXTENSION OF TIME FOR SERVICE**

(FOURTH REQUEST)

22 The Plaintiff Eddie Dutchover ("Mr. Dutchover") by and through his attorneys of
23 record, the law firm of HKM Employment Attorneys LLP, hereby makes this Fourth Motion to
24 Extend Time for Service.

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1 **REQUEST FOR ADDITIONAL TIME TO SERVE**

2 **FACTUAL AND PROCEDURAL HISTORY**

3 On or about February 4, 2020, Plaintiff, in proper person, requested an extension of time
4 to serve Defendants so that he could obtain legal counsel to assist him with the matter [ECF 5].
5 The Court granted that Motion [ECF 6].
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7 Since that time, Plaintiff diligently sought counsel, and HKM Employment Attorneys
8 LLP appeared on Plaintiff's behalf on or about May 5, 2020.

9 On May 11, 2020, the Court issued an Order to Show Cause on why the Plaintiff's
10 Complaint should not be dismissed for failure to serve. [ECF 9]. On May 20, 2020, Plaintiff,
11 through his counsel, responded to the Court's Order to Show Cause and contemporaneously
12 filed a Motion for Extension of Time for Service [ECF 12 and ECF 14].
13

14 Plaintiff's Response to the Order to Show Cause and simultaneous Motion for an
15 Extension of Time for Service requested additional time to effectuate service due to the
16 complications of entering Tribal lands to personally serve the Defendant Tribe and the
17 individual Defendants. *See*, ECF 12 and 14. On May 29, 2020, the Court granted Plaintiff's
18 Motion for Extension of Time for Service and provided Plaintiff with an extension until June
19 29, 2020 to serve his Complaint. [ECF 15]. On June 29, 2020, Plaintiff filed his Second Motion
20 for Extension of Time for Service [ECF 16]. Via Minute Order on July 1, 2020 [ECF 17], the
21 Court granted Plaintiff's Second Motion for Extension of Time for Service.
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23 Thereafter, on July 28, 2020, Plaintiff filed its Third Motion for Extension of Time for
24 Service. ECF 18. That motion was granted in part and denied part via the Court's Order on July
25 30, 2020 [ECF 19], which granted Plaintiff an additional 60 day extension to serve his
26 Complaint and encouraged Plaintiff to consider "whether other means of service might be
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1 reasonably calculated to provide defendants notice and an opportunity to respond.”

2 Since the Court’s initial Order on May 29, 2020 granting an extension of time to serve
3 and the making of this motion, Plaintiff and his counsel have diligently attempted to effectuate
4 service on the Defendants. Plaintiff has timely obtained declarations of attempted service from
5 its process server, Legal Wings, for each of its requested extension which demonstrate
6 numerous and diligent attempts to properly serve Defendants, to no avail. *See*, ECF 16 and
7 ECF 18 at Exhibits “1” through “11,” Declarations of Attempted Service on Defendants, Moapa
8 Band of Paiute Indians, Moapa Tribal Council, Moapa Tribal Enterprises, Vickie Simmons,
9 Tyler Samson, Gregory Anderson, Ural Begay, Leslie Bradley, Darren Deboda, Delaine Bow,
10 and Samantha Lee, respectively.
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12 Also, in the interim period since the Court’s May 29, 2020 Order and the filing of this
13 Motion, the Plaintiff himself attempted entry onto the Tribal land to secure information about
14 how the Complaint may be served. Plaintiff was told only members of the Tribe with
15 identification verifying the same were permitted onto the land during the current COVID-19
16 pandemic lockdown. *See*, ECF 16 at Exhibit “12,” Declaration of Plaintiff, Eddie Dutchover.
17

18 Since the Court’s most recent order on July 30, 2020, Plaintiff and his counsel have
19 remained diligent regarding their duties to serve the Defendants. Attached hereto at Exhibits
20 “1” through “11” are Affidavits of Attempted Service on each of the Defendants showing
21 Plaintiff’s further attempts, since July 30, 2020, to effectuate service on the Defendants.
22 Moreover, Plaintiffs’ counsel again reached out to Defendants’ only known counsel, Brian
23 Chestnut, on September 16, 2020 to inquire again whether he will accept service. Plaintiff’s
24 counsel received no response to that email. Ex. “12.” Plaintiff’s counsel again reached out to
25 Mr. Chestnut on September 22, 2020, asking for a response to their email and also requesting
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1 that Mr. Chestnut provide Plaintiff's counsel with the name of any other counsel that represents
2 the tribe that may be able to accept service. Again, Plaintiff's counsel received no response to
3 this email. *Id.*

4 Further, on September 15, 2020, Plaintiff's counsel contacted the Bureau of Indian
5 Affairs in Nevada requesting their help with effectuating service on tribal lands. Ex. "13,"
6 Declaration of Dana Sniegocki. Such office, located in Carson City, Nevada, could not offer
7 any assistance for two reasons: first, Plaintiff's counsel was told that office did not service the
8 Moapa Band of Paiute Indians and instead, Plaintiff's counsel was directed to contact the St.
9 George, Utah location of the Bureau; and second, the person with whom Plaintiff's counsel
10 spoke did not believe the Bureau assisted with service of process. *Id.* Plaintiff's counsel
11 thereafter called the St. George, Utah office of the Bureau of Indian Affairs and was directed to
12 leave a voicemail, which she did. *Id.* No one from the St. George office ever returned Plaintiff's
13 counsel's call.

14 Again, on September 15, 2020, Plaintiff's counsel contacted the United States Marshals
15 Service ("USMS") in the District of Nevada. *Id.* The USMS agreed to attempt service on
16 Plaintiff's behalf on the tribal lands, but indicated it was not sure whether it would have any
17 more success than Legal Wings. *Id.* Currently, the USMS is in the process of attempting
18 service. On September 24, 2020, Plaintiff's counsel inquired with the USMS about the status
19 of their attempts by email but were told the deputy assigned to the matter was out of the office
20 and they should have a response to Plaintiff's counsel by Monday, September 28, 2020.
21 Plaintiff's counsel has not yet received a status update from the USMS. *Id.*

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ARGUMENT

I. GOOD CAUSE EXISTS TO EXTEND PLAINTIFFS' TIME TO SERVE

Rule 4(m) of the Federal Rules of Civil Procedure governs extension of time to serve complaints. “Rule 4(m) requires a two-step analysis in deciding whether or not to extend the prescribed time period for the service of a complaint. In *re Sheehan*, 253 F.3d 507, 512 (9th Cir. 2001), citing Fed.R.Civ.P. 4(m); *Petrucelli v. Bohringer & Ratzinger, GMBH*, 46 F.3d 1298, 1305 (3d Cir.1995). “First, upon a showing of good cause for the defective service, the court must extend the time period. Second, if there is no good cause, the court has the discretion to dismiss without prejudice or to extend the time period.” *Id.*

“We have recognized that ‘[a]t a minimum, ‘good cause’ means excusable neglect.” *Id.*, citing *Boudette v. Barnette*, 923 F.2d 754, 756 (9th Cir.1991). *Boudette v. Barnette*, 923 F.2d 754, 756 (9th Cir.1991). “In *Boudette*, we stated that a plaintiff may be required to show the following factors in order to bring the excuse to the level of good cause: ‘(a) the party to be served received actual notice of the lawsuit; (b) the defendant would suffer no prejudice; and (c) plaintiff would be severely prejudiced if his complaint were dismissed.’” *Id.*

On May 19, 2020, Plaintiff’s counsel reached out to counsel for Defendant requesting that he accept service of the Complaint and First Amended Complaint due to the current lockdown situation of the Tribal lands. *See*, ECF 16 at Ex. “13,” email thread from Jenny Foley, Esq. to Brian Chestnut, Esq. On May 20, 2020, Defendants’ counsel responded that he could not accept service. *Id.* On May 26, 2020 Plaintiff’s counsel again contacted Mr. Chestnut inquiring about an alternative address at which to serve Defendants in light of the current COVID-19 lockdown. *Id.* Mr. Chestnut did not respond to such email inquiry. Plaintiff’s counsel again reached out on September 16, 2020 and September 22, 2020 and received no

1 response from Mr. Chestnut. Ex. “12.” Based upon the foregoing, it is clear that the Defendants
2 have received actual notice of the lawsuit. Further, there is no indication that Defendants would
3 be prejudiced in any way by an extension of the deadline to serve. Such impediments to serving
4 the Complaint have resulted not from a lack of diligence on the part of the Plaintiff, but rather
5 from a closing of the Tribal lands by the Defendants, understandably so, due to the COVID-19
6 pandemic situation. Granting an extension of the deadline to serve would maintain the *status*
7 *quo*, even the playing field between the Plaintiff and Defendants, and allow the Plaintiff’s
8 claims to be fully litigated on their merits. Dismissing Plaintiff’s Complaint, on the other hand,
9 would only serve to punish Plaintiff who has remained diligent throughout the course of this
10 case. Plaintiff should not be prejudiced by the dismissal of his complaint due solely to an
11 unavoidable procedural infirmity.

14 Plaintiff submits that in light of the continuing COVID-19 pandemic, the subsequent
15 closure of the reservation to all but tribal members, and Plaintiff’s documented good-faith
16 efforts to effectuate service, including process server attempts, Plaintiff’s own attempt to gather
17 information relevant to effectuating service, Plaintiff’s counsel’s efforts to secure Defendants’
18 counsel’s consent to accept service of the Complaint on numerous occasions, Plaintiff’s efforts,
19 albeit unsuccessful, to receive assistance from the Bureau of Indian Affairs, as well as Plaintiff’s
20 later engagement of the USMS to try to effectuate proper service, good cause exists to extend
21 the time for service. Based upon the repeated, unsuccessful attempts of the Plaintiff to serve
22 his Complaint over the course of the past several months, and the fact that there remains
23 uncertainty regarding any imminent opening of the tribal lands, Plaintiff respectfully requests
24 an additional sixty (60) days to effectuate service in this matter. Additionally, although not
25 explicitly provided for under the Federal Rules of Civil Procedure, service by publication is
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1 permissible under the Nevada Rules of Civil Procedure. Nev. R. Civ. P. 4(d)(3). Plaintiff is
 2 open to this alternative method of service if the Court permits it. Additionally, Plaintiff is open
 3 to effectuating service via first class or certified mail if the Court so orders. In any event,
 4 Plaintiff will continue his endeavors to properly effectuate service during the interim period
 5 should the Court grant an additional extension of sixty days to effectuate service.
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7 CONCLUSION

8 For all of the foregoing reasons, Plaintiff respectfully requests the Court grant a sixty
 9 (60) day extension of time to serve the Defendants in the matter and allow plaintiff to submit
 10 a status report in sixty (60) days' time if service cannot be effectuated in the interim.
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12 Dated: September 28, 2020.

13 Respectfully submitted,

14 **HKM EMPLOYMENT ATTORNEYS, LLP**

15 By: /s/ Jenny L. Foley

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27 The Court finds that plaintiff has established good cause for an extension on the
 28 time to serve defendants in this matter. Plaintiff shall be allowed to submit an
 additional status report or motion in 60 days' time if service cannot be effectuated in
 the interim. If plaintiff desires to serve defendants by alternative means, he must
 file the appropriate motion.

IT IS SO ORDERED

DATED: 11:22 am, October 05, 2020



BRENDA WEKSLER
UNITED STATES MAGISTRATE JUDGE